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Hearing:
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**THIS DISPOSITION
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Paper No. 14
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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re American Urban Radio Networks

Serial No. 74/653,638

See
1995
Lynn J. Alstadt of Buchanan Ingersoll, P.C. for American
Urban Radio Networks

Richard A. Straser, Trademark Examining Attorney, Law Office
104 (Sidney Moskowitz, Managing Attorney)

Before Simms, Cissel and Seeherman, Administrative Trademark
Judges.

Opinion by Seeherman, Administrative Trademark Judge.

American Urban Radio Networks has applied to register
USA MUSIC MAGAZINE and design, as shown below, for radio
broadcasting services and entertainment services in the
nature of radio programs in the field of news, sports, and
entertainment.¹ Exclusive rights to USA have been
disclaimed

¹ Application Serial No. 74/653,638, filed March 31, 1995 and
asserting first use and first use in commerce on March 5, 1994.



The Examining Attorney required that applicant also disclaim exclusive rights to the words MUSIC MAGAZINE on the ground that this phrase is merely descriptive of applicant's services. When the Examining Attorney made this requirement final, applicant appealed.

The appeal has been fully briefed, and applicant and the Examining Attorney appeared at an oral hearing before the Board.

Section 6(a) of the Trademark Act, 15 U.S.C. 1056(a), provides that the Commissioner may require the applicant to disclaim an unregistrable component of a mark otherwise registrable. A term is unregistrable under Section 2(e)(1) of the Act if it is merely descriptive of the goods or services, i.e., it immediately conveys information concerning a quality, characteristic, function, ingredient, attribute or feature of a product or service. See **In re Venture Lending Associates**, 226 USPQ 285, 286 (TTAB 1985).

During the examination of this application the Examining Attorney did a search of the NEXIS data base for articles in which "music magazine" appeared within 25 words

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of "radio." He submitted excerpts from eight of the articles retrieved by that search.

We cannot conclude from these articles that "music magazine" is descriptive of a radio program format. Most of the articles appear to relate to print publications or at the very least are ambiguous. We have quoted below excerpts from the articles specifically mentioned by the Examining Attorney as supporting his position:

Blondie is spending her down time working on her poetry, writing for radio station 99X-FM's monthly music magazine, the 99Xpress, and watching "Matlock," "The Atlanta Journal and Constitution," October 6, 1995

Radio AAHS is a Warner Music Enterprises music and magazine continuity program for children between the ages of 5 and 12.

These 72,045 active subscribers pay \$4.98, plus shipping and handling, each month to receive an issue of Radio AAHS magazine. It comes along with a compact disc featuring 10 new songs recorded for children, plus stories and games.

Radio AAHS magazine contains articles and information on kids' heroes (real and animated), reviews of the latest movies, books, CD-ROMs and video games, as well as letters from readers
"DM News," August 28, 1995

In our view, both of these excerpts are at least as amenable to an interpretation that they refer to a print publication as to a radio program. The fact that the first article mentions that the radio station has a monthly music magazine indicates that this is printed matter, while the second article, which refers to a shipping and handling fee,

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and states that it comes with a compact disc, clearly shows that the magazine is an actual product rather than a broadcast program.

Perhaps recognizing the sparseness of this evidence, with his appeal brief the Examining Attorney submitted the following definition of "magazine concept"/"magazine format" taken from NTC's Dictionary of Advertising, 2d ed.:

magazine concept: 1. A format for a television or radio program; several feature segments on various topics are broadcast within a program, similar to the format used in magazines. 2. The idea of a radio or television program having commercials by two or more advertisers rather than using program sponsorship. Also magazine format.

magazine format: See previous.

Applicant has objected to our taking judicial notice of this definition. In its reply brief it stated that allowing the Examining Attorney to rely on the dictionary "at this late date is arbitrary and not fair to applicant." Reply brief, p. 3. At the oral argument, applicant further objected on the basis that the dictionary from which the definition is taken is a specialized dictionary.

The dictionary in question was published by National Textbook Company, and is described as including "more than 5,000 precise definitions of current advertising, marketing, and communications terms," which is "an essential resource for every advertising, marketing, and media practitioner or novice..." The prefatory material goes on to say,

"Developed out of everyday agency and corporate experience, these fact-packed pages provide the complete working vocabularies of every facet of the advertising and marketing profession."

We think it appropriate to take judicial notice of the dictionary definitions of "magazine concept" and "magazine format." Although it is unfortunate that the Examining Attorney had not made this definition of record as part of an Office action,² the Board may take judicial notice of dictionary definitions whenever they are submitted, and may even notice such definitions sua sponte. See **University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.**, 213 USPQ 594 (TTAB 1982), affd. 703 F.2d 1372, 217 USPQ 505 (Fed Cir. 1983). Nor does the fact that the definition comes from a specialized dictionary prevent us from taking judicial notice of it. We may look to a specialized dictionary to determine the meaning of a term to a specialized group of purchasers. And, while the ultimate consumers/listening audience of applicant's radio broadcasting services and entertainment services are the general public, the purchasers of the services are the radio stations on which the programming is broadcast. This is

² The Examining Attorney explained in his brief that he "was unable to find the appropriate definition until this juncture due to the fact that he had been seeking guidance in reference texts other than a dictionary of advertising terms "

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apparent from applicant's specimens, which are quite clearly directed to the stations, e.g., "And count on more and more listeners to tune in every week for the USA Music Magazine concert calendar....," "When programming counts, keep pace with Vinny Brown and Wendy Williams on the USA Music Magazine!" and "Call USA Music Magazine Affiliate Relations now at: 800-0456-4211 Contact our Sales Office at"

Moreover, we also take judicial notice of the following definition for "magazine" taken from The Random House Dictionary of the English Language, 2d ed., unabridged, © 1987.

Also called **magazine show**. *Radio and Television*. **a.** Also called **newsmagazine**. a regularly scheduled news program consisting of several short segments in which various subjects of current interest are examined, usually in greater detail than on a regular newscast. **b.** a program with a varied format that combines interviews, commentary, entertainment, etc.

This dictionary, which is a standard dictionary directed to the general public, indicates how the term would be perceived by the ultimate consumers of applicant's broadcasting and radio program entertainment services.

The dictionary definitions persuade us that MAGAZINE is a descriptive term for a characteristic of applicant's identified "broadcasting services" and "entertainment services in the nature of radio programs in the field of news, sports, and entertainment," in that it immediately conveys information about the format of the broadcast

programs. Further, applicant's own specimens show that a primary feature of the programs is the music ["Every weekend we play only the hits' USA Music Magazine delivers two hours of explosive music, features, and celebrity news'"] Thus, we find that MUSIC MAGAZINE is merely descriptive of applicant's broadcasting and radio program entertainment services.


We have considered applicant's argument that its mark is suggestive because one would not immediately think of a radio program, but would immediately understand it to mean a printed publication. The difficulty with this argument is that descriptiveness is not determined in the abstract, but in relation to the goods or services for which registration is sought, the context in which it is used, and the impact that it is likely to make on the average purchaser of such goods or services. In *re Recovery, Inc.*, 196 USPQ 830 (TTAB 1977). In the context of a radio program or radio broadcast services, MUSIC MAGAZINE would immediately convey to the consumers of the services that the programming is in a magazine format which features music.

Applicant also argues that the dictionary definitions of "magazine concept" and "magazine format" are irrelevant because its mark does not contain the words "concept" or "format." We are not persuaded by this argument. First, we would point out that the definition taken from the Webster's


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dictionary is for the word "magazine" per se. In any case, the definitions taken from the Dictionary of Advertising show that "magazine" refers to a type of program format, such that when "magazine" is used in connection with broadcasting and radio program entertainment services it directly conveys to consumers information about the format of the programming.

Decision: The requirement for a disclaimer of MUSIC MAGAZINE is affirmed. If applicant submits the required disclaimer within 30 days, this decision will be set aside.


R. L. Simms


R. F. Cissel


E. J. Seeherman
Administrative Trademark Judges
Trademark Trial and Appeal Board

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